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IN THE

Supreme Court of the United States

October Term, 1957

No. 665

A. H. BULL STEAMSHIP CO.,
Petitioner,

against

NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO, and INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, INC., AFL-CIO,
Respondents.

A. H. BULL STEAMSHIP CO.,
Petitioner,

against

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, IN OPPOSITION

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BRIEF FOR RESPONDENT, NATIONAL MARINE ENGINEERS' BENEFICIAL ASSOCIATION, IN OPPOSITION

A. H. Bull Steamship Co. ("Bull Steamship" herein) has filed a single petition for writs of certiorari to review two judgments of the United States Court of Appeals for the Second Circuit filed November 21, 1957 (R. 142a)[1]

[1] Page references to the record or Appendix filed in the appeal of this case are followed with a lower case "a."

Opinion Below

Bull Steamship as plaintiff instituted a suit in the District Court for the Eastern District of New York against the two respondents, National Marine Engineers' Beneficial Association, AFL-CIO ("MEBA" herein) and the International Organization of Masters, Mates & Pilots, Inc. ("MM&P" herein). The District Court's opinion of October 17, 1957 is printed at pages 112a-120a of the Appendix below and in Appendix A, attached to the Petition, at pages 29-36.[2]

The opinion of the Court of Appeals of November 31, 1957 is printed in Appendix A, at pp. 49-60.

Jurisdiction

The jurisdictional requirements are adequately set forth in the Petition.

Petitioner has, however, joined in its petition another case[3] on the ground that there are questions common to both. This we dispute.

The opinion of the Court of Appeals disposes of the case against respondent *MEBA* without reaching any such common question. Any consolidation of the two cases is therefore opposed by MEBA.

Questions Presented

A) Can suits for violation of collective bargaining agreements made exclusively for "supervisory" personnel

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[2] References to Appendix A, B or C are to the Appendices attached to the Petition.

[3] Suit instituted by Bull Steamship in District Court against Seafarers' International Union, which was heard and decided independently both before the District Court and Court of Appeals. (Appendix A at pp. 21 *et seq.* and 37 *et seq.*

be brought under Section 301 of the Labor Management Relations Act of 1947, 29 U. S. C. Sec. 185 (Appendix B, at p. 62).

B) Where the Court of Appeals determines factually that the case presents a complete absence of any substantial federal question and finds a want of equity in Petitioner's position, does it have the judicial authority to reverse the District Court's temporary injunction order, restraining a strike and peaceful picketing in an admitted labor dispute.

Statutes Involved

The pertinent provisions of all relevant statutes are set forth in Appendix B, attached to the Petition, at pp. 62-70.

Statement of Case and Disposition Below

MEBA, an unincorporated labor union, entered into a collective bargaining agreement with Petitioner in June 1955 covering the licensed marine engineers employed aboard Petitioner's vessels (Appendix C, at pp. 72-74). This agreement expires June 15, 1958.

Pursuant to Section 39 of said Agreement, which provides for only two wage reviews during its three year term, MEBA on April 11, 1957 sent a notice to the Petitioner requesting such review. Two conferences, with offers and counter offers being rejected, resulted in an impasse, and MEBA advised Petitioner that under the circumstances it reserved the right to take such action as it deemed necessary to protect the interests of its members who were employed by Petitioner (26a-27a).

There is not a word in the record that Petitioner endeavored at any time to seek mediation of its dispute with MEBA. On the other hand, MEBA specifically contra-

dicted the claim of Petitioner that any legitimate offer of arbitration of the wage issue had been made (31a).

On August 27, 1957, MEBA initiated its own picketing conducted exclusively in behalf of its independent labor dispute with Petitioner (27a).

The MEBA contends that the parties to the Agreement clearly understood and the various provisions of the Agreements so indicate that (1) such wage review (contained in Section 39) was not subject to the arbitration clause of the Agreement (contained in Section 2 titled "Grievance Procedure and Arbitration") which governs the adjustment of certain type grievances; (2) the "no strike" clause contained in Section 2 covering "Grievance Procedure and Arbitration" was limited to the grievances which can be taken up thereunder; and (3) in the absence of available compulsory arbitration for such wage review, the MEBA had a right to strike, otherwise the wage review would be meaningless (28a-32a). Therefore, a strike after an impasse had been reached on the wage review, was not a violation of the Agreement. See *National Labor Relations Board* v. *Lion Oil*, 352 U. S. 282.

Petitioner, on August 27, 1957 brought suit against MEBA in the Supreme Court of the State of New York, claiming a breach of the collective bargaining agreement, because of MEBA's strike and picketing, and requested an injunction to restrain the same. A motion for a temporary injunction was denied on September 3, 1957 and the complaint dismissed with the Court holding that a "labor dispute" was involved and therefore governed by New York's little Norris-LaGuardia Act (39a-49a).

Leave to amend was granted and a second amended complaint was filed in the State court on September 9, 1957 and another motion made for a temporary injunction. The Court again found on September 19, 1957 that a "labor dispute" was involved, thereby governed by the State's little Norris-LaGuardia Act and set the case down for a

hearing before a referee to hear and report to the Court (50a-58a). This proceeding has not been processed by Petitioner but has been permitted to lie dormant.

It was not until October 7, 1957 that the suit was brought in the District Court against the MEBA, alleging breach of the collective bargaining agreement because of the strike and picketing and in addition to a request for declarative and damage relief, sought precisely the same injunction which had been denied in the State court (2a-8a). Cf. *Amalgamated Clothing Workers* v. *Richman Brothers*, 348 U. S. 511.

A motion for a temporary injunction was heard by the District Court on the basis of the complaint and supporting and opposing affidavits. There was no trial or hearing of witnesses.

Before the District Court, MEBA took the following position supported by several affidavits:

> (1) The District Court lacked jurisdiction to entertain the suit against MEBA since there was no diversity of citizenship between the parties (34a), and the collective bargaining agreement covering only licensed marine engineers, who are "supervisors," was not within the purview of Section 301 of the Labor Management Relations Act of 1947 (33a, 53a, 54a).
>
> (2) The complaint failed to state a cause of action in that the essence of plaintiff's case is that MEBA by its picketing has committed a breach of its collective bargaining agreement; whereas in fact MEBA has not committed any such breach.
>
> Certainly, a sufficiently serious conflict on interpretation as to whether a breach had occurred, had been presented in the moving and opposing affidavits to justify a full hearing with opportunity for witnesses before the extraordinary relief of a temporary injunction be granted.

(3) Even if it be assumed, that MEBA has committed a breach of contract and that the court has jurisdiction, nevertheless the court could not grant the relief sought by way of an injunction restraining peaceful picketing. To do so would be in direct violation of the provisions of the Norris-LaGuardia Act.

(4) Proceeding should be stayed because of pendency of prior State court action.

The District Court, in spite of what we considered a formidable array of legal obstacles, issued a temporary injunction enjoining the strike and peaceful picketing by MEBA (121a-122a).

On the issue of federal jurisdiction, the District Court conceded that there probably was no diversity of citizenship between Bull Steamship and MEBA since MEBA had members who reside in Delaware, the state of incorporation of the Petitioner (115a). With respect to the second alleged ground for federal jurisdiction, namely, Section 301 of the Labor Management Relations Act, even though the record clearly established, without contest, that the personnel covered by MEBA's agreement were "supervisors" and therefore not "employees" as defined by that Act, the Court simply concluded that ". . . it is not necessary to adjudicate these issues, other than to find, as this Court does find that the plaintiff presents a substantial Federal question and that this Court can decide the matter only after it has assumed jurisdiction over the controversy. The complaint herein alleges the violation of a single right, the right to have its agreement performed and a single claim for relief. Under these circumstances, the Court assumes jurisdiction of the action. *Strachman* v. *Palmer*, 177 F. 2d 427; *Huron* v. *Ousler*, 289 U. S. 238 and *Brown* v. *Haldale Estates, Inc.*, 151 Supp. 118" (116a).

The District Court thereupon addressed itself to the question of the alleged breach of contract and though recognizing that an unresolved wage issue was the cause of an admitted labor dispute and the resultant strike and picket-

ing, relied upon the no strike clause in the agreement and held: "In neither agreement (one with MEBA and the other with the MM&P) is the no strike clause qualified by the wage reopening clause. The defendants, by the terms of the agreements, were not entitled to strike by reason of the collapse of the wage negotiations, whatever the cause" (114a).

The District Court concluded that it could issue the injunction against peaceful picketing because Section 14(a) of the National Labor Relations Act, as amended (Appendix B, at p. 66), modified the Norris-LaGuardia Act, by excluding from its protection, unions representing "supervisors."

The Court of Appeals reversed and resolved the first Question, presented supra, by determining as a matter of statutory interpretation that under Section 301 of the Labor Management Relations Act (Appendix B, at p. 62), suits can be brought only for violations of collective bargaining agreements which cover "employees" as defined by Section 2(3) of the Act (Appendix B, at p. 65). And conversely, agreements covering exclusively "supervisors" are not within the purview of Section 301. Incidentally, while the District Court actually failed to pass on this issue, by implication, in finding it necessary to discuss whether the Agreement covered "supervisors," it apparently concurred with the statutory interpretation of the Court of Appeals.

The Court below thereupon sought to ascertain whether any substantial federal question had been presented in the suit against MEBA.

The Court of Appeals accepted the finding of the District Court as to the absence of diversity of citizenship with the comment: "But the trial court did not premise its jurisdiction to issue an injunction on diversity grounds, for it found evidence that members of MEBA reside in the State of Delaware" (Appendix A, at p. 52).

The Court below then addressed itself to the second alleged ground for federal jurisdiction, i.e., Section 301 of the Labor Management Relations Act. It held that "The substantial question of Federal jurisdiction thus resolves itself into one of fact: Are the members of MEBA covered by the collective bargaining contract with Bull 'supervisors' within the definitions of the Act" (Appendix A, at p. 54). On this issue of fact, the Court decided that ". . . the supervisory status of MEBA employees of Bull is well established in the pleadings, affidavits and briefs below" (Appendix A, at p. 57). In addition the Court pointed out ". . . as discussed below, the trial court held the prohibitions of the Norris-LaGuardia Act, 29 U. S. C. Sec. 101 *et seq.*, inapplicable to this case because it was a dispute between an employer and supervisors (not "employees"). It is difficult for us to see how MEBA's members can be 'supervisors' for the purposes of the Norris-LaGuardia Act and 'employees' for purposes of the Taft-Hartley Act of 1947" (Appendix A, at p. 55).

On the basis of the foregoing facts, the Court of Appeals determined that the Petitioner had not sustained its burden necessary to show a ". . . substantial probability that the Court will find a basis for federal jurisdiction (which) like the probability of a plaintiff's final success on the merits is a crucial element necessary to justify the issuance of an injunction pendente lite." And, in addition, it found the balance of equities did not favor the Petitioner (Appendix A, at p. 57). Accordingly, the Court responded affirmatively to the second Question, presented supra, by reversing the District Court's temporary injunction.

The Court of Appeals found it unnecessary, as far as MEBA is concerned, ". . . to ascertain whether or not the strikes actually constituted breaches of contracts . . ." (Appendix A, at p. 52); though the Court acknowledged that "The parties disagree whether or not these strikes constitute breaches of the contracts, the controversy merely

concerning whether or not the no strike clauses are applicable to the wage reopening clauses" (Appendix A, at p. 51).

Nor did the Court below, in the face of its determination on the first and second Questions, find it necessary to pass upon the question whether an injunction could issue against *MEBA's* peaceful picketing in the course of a labor dispute because of the Norris-LaGuardia Act; or whether such Act was modified by Section 301 of the Labor Management Relations Act or any other legislation directed against unions representing "supervisors."

It is submitted the rulings of the Court of Appeals are not in conflict with any decisions of other federal courts.

There are no considerations, we further submit, that demonstrate the importance of any question of federal law raised by this appeal which should be decided by this Court at the present stage of the litigation.

Reasons For Denying the Writ

A.

The Court of Appeals, in answering the first Question, that Section 301 of the Labor Management Relations Act is not applicable to collective bargaining agreements which cover "supervisors" exclusively, was clearly correct and in light of the specific provisions and legislative history such interpretation was the only possible decision to be made. This ruling does not present a conflict with any decision of other Federal Courts.[1] The ruling is so patently correct that no important question of federal law is presented which should be settled by this Court.

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[1] Though the legislation has been in effect for more than 10 years, the present suit against MEBA is the first attempt to bring an agreement covering "supervisors" within the purview of Section 301.

The Court below reasoned that the clause "labor organization representing employees" contained in Section 301 of the Act (Appendix B, at p. 62) must necessarily be interpreted "to mean an organization of 'employees' covered by the collective bargaining agreement in question and which exists for the purpose of dealing with *their* employer" (Appendix A, at p. 54). Thus, it is immaterial whether MEBA has, as members, "employees" of other employers which might make it a "labor organization." *Labor Board* v. *Edward G. Budd Manufacturing Co.*, 169 F. 2d 571 (1948), cited by Petitioner, is therefore inapplicable rather than in conflict.

The term "employees" was then read in light of the definition contained in Section 2(3) of the Act which specifically excludes "supervisors" as defined in Section 2(11) of the Act (Appendix B, at pp. 63, 65, 66). Such interpretation was not contrary to any determination made by the District Court; actually by implication the District Court was in accord. There is no decision of any Federal court to the contrary.

Aside from the fact that Section 2 of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 (Appendix B, p. 65) and Title V, Section 501 of the latter act (Appendix B, at p. 63) command that the term "employees" wherever used in the Acts be read in light of the definition provided, the Court of Appeals predicated such usage upon the legislative history that "The whole thrust of the supervisor provisions in the Taft-Hartley Act of 1947 was to remove supervisors from the operation of the National Labor Relations Act and return them to the basis which they enjoyed before the Wagner Act" and cited H.R. Rep. No. 245, 80th Cong. 1st Sess. 8, 13, 15, 17; Sen. Rep. No. 105, 80th Cong. 1st Sess. 3-5, 14. Also see 93 Cong. Rec. 80th Cong. 1 Sess., pp. 4566 and 5105. Thus, "supervisors" covered by collective bargaining

agreements may not receive any of the benefits of Section 301 of the Labor Management Relations Act, anymore than they can under any other section of the Act,[1] and equally so can not be subjected to its burdens. The District Court apparently agreed with such judicial interpretation when it stated: "Likewise, it is plain that the Congress intended that 'Supervisors' should not be governed by that Act (Labor Management Relations Act), or by any other national or local law . . ." (117a).

It is interesting that Petitioner fails to suggest or support any concrete alternative interpretation.

The two decisions from the Fifth Circuit cited by Petitioner are not in conflict in any sense. *W. T. Smith Lumber Co.* v. *NLRB*, 246 F. 2d 129 (1957) and *International Rice Milling Co.* v. *NLRB*, 183 F. 2d 21 (1951) reflect the Court's desire to avoid an interpretation of the section of the Act in question (not Section 301) which would have left innocent third parties, namely, railroads, open to secondary boycotts contrary to the legislative objective. But, in the present case, it was the clear-cut mandate of Congress relating to "supervisors" which was being adhered to. See Frankfurter, *Some Reflections on the Reading of the Statutes*, 47 Col. L. Rev. 527.

A case comparable to the present proceeding against MEBA is *Di Giorgio Fruit Corp.* v. *NLRB*, 191 F. 2d 642 (1951) cert. denied 342 U. S. 869, where the definitions of "employees" and "labor organizations" found in Section 2 of the National Labor Relations Act, as amended, were applied to Section 8 of the Act on the ground that the excluded class of workers, namely farm workers, was not entitled to the benefits of the Act and must be equally immune from its burdens.

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[1] See *Labor Board* v. *Edward G. Budd Manufacturing Co.*, 169 F. 2d 571 (1948) and *NLRB* v. *Inter City Advertising Co. of Charlotte*, 190 F. 2d 420 (1951) cert. denied 342 U. S. 908.

In *W. T. Smith Lumber* v. *NLRB*, *supra*, the Court specifically distinguished its special problem from that present in the *Di Giorgio Fruit Corp.* case and did not question the correctness of the latter decision. See its footnote 7 at page 131.

Petitioner points to the anomalous result if the term "employees" were to be inflexibly read in light of its statutory definition wherever used in the Act since this would exclude "supervisors" from Section 313 of the Federal Corrupt Practices Act 2 U. S. S. Sec. 251, which is amended by Section 304 of the Labor Management Relations Act. Petitioner observes "A more palpable affront to congressional intent can hardly be imagined." However, the legislative history of the Labor Management Relations Act discloses a more intelligent congressional understanding of its enactment than Petitioner is prepared to accord. See H.R. Conference Rep. No. 510, 80th Cong. 1st Sess. at p. 68, which specifically excludes the statutory definitions only from Section 313 of the Corrupt Practices Act with the comment:

> "Title V.
>
> Section 501 of the Senate amendment contained definition of terms used in Title II, III and IV. It should be noted that none of the terms defined, however, have any application to the amendments to Section 313 of the Federal Corrupt Practices Act since Section 313 of the Corrupt Practices Act is not a part of 'this Act.' "

The statutory interpretation by the Court of Appeals raises no constitutional issue, does not adversely affect the administration of the Act by the National Labor Relations Board; actually it is consistent with the view of the Board (see *Di Giorgio Fruit Corp.* v. *NLRB*, *supra*) and does not involve any far-reaching or troublesome issue.

B.

The Court of Appeals in reversing the District Court's temporary injunction order restraining a strike and peaceful picketing in a labor dispute when it found ". . . the probability of jurisdiction . . . doubtful . . ." and a want of equity in position of Petitioner, simply invoked accepted equity doctrine. Such ruling certainly does not present a decision in conflict with any decision of other Federal courts. And it is difficult to see any important question of federal law involved in such determination to be settled by this Court.

The Court below determined that "The substantial question thus resolves itself into one of fact: . . ." It thereupon probed the entire record to ascertain whether the claim of a substantial federal question was plainly without color of merit. See *Land* v. *Dollar*, 330 U. S. 731, 736 footnote 4.

First, there is a finding that no diversity of citizenship was established between MEBA, an unincorporated association and the Petitioner (Appendix A, at p. 52). This eliminated one possible ground for federal jurisdiction. *Levering & Garrigues* v. *Morrin*, 61 F. 2d 115 (1932) affirmed 289 U. S. 103.

Second, there is a finding, that ". . . the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits and briefs below" (Appendix A, at p. 57).

The Court of Appeals thereupon concluded that the Petitioner had not sustained its burden to show a ". . . substantial probability that the Court will find a basis for federal jurisdiction (which) like the probability of a plaintiff's final success on the merits, is a crucial element necessary to justify the issuance of an injunction *pendente lite*" (Appendix A, at p. 56). The Court proceeded to balance

the relative equities of the parties in light of the record and stated: "And where the probability of jurisduction is doubtful, the only justification for issuing the preliminary injunction is that Bull will suffer irreparable harm from a maintenance of the *status quo* during the period necessary to determine the jurisdictional question which far outweighs the possible harm to MEBA and the expressed public policy forbidding federal courts to issue labor injunctions. This possibility is not shown here. In fact Bull's delay in seeking this relief controverts the probability of irreparable harm during the few days it might take the trial court to resolve the jurisdictional question" (Appendix A, at p. 57).

This Court, we respectfully submit, should not grant a writ, at the stage of an interlocutory order, simply to review questions of fact (*Southern Power Company* v. *North Carolina Public Service Co. et al.*, 263 U. S. 508) or an exercise of equity discretion in the issuance or denial of a temporary injunction. *Meccano, Limited* v. *John Wanamaker*, 253 U. S. 136.

The Court of Appeals did not improperly limit or negate the doctrine of "pendant jurisdiction." Its opinion clearly discloses a recognition that such doctrine may apply to the issuance of a temporary injunction. "If this were not so a court would be powerless to maintain the *status quo* in a proper case due solely to defendant's attack on its jurisdiction" (Appendix A, at p. 56). The Court's special concern for labor cases does not reflect an exclusion of such situations from the rule of "pendant jurisdiction" but rather a proper recognition of the express national policy framed by the Norris-LaGuardia Act. Finally, the Court of Appeals actually questioned whether the lower court had applied the doctrine of "pendant jurisdiction" by observing that the District Court "never goes so far and nowhere indicates that it issued the preliminary injunction on some separate state ground supporting the relief" (Appendix A, at p. 56).

There is no conflict with any of the cases cited by Petitioner invoking "pendant jurisdiction." In all such cases, regardless whether the Court was granting preliminary or final relief, it was a *sine qua non* that a substantial federal question be presented. For example, in *Louisville & Nashville RR Co.* v. *Garrett*, 231 U. S. 298, cited by Petitioner, this Court specifically justified the issuance of a temporary injunction by commenting:

> "The reference undoubtedly is to an asserted conflict with the Federal Constitution and the question of unconstitutionality in this sense must be a substantial one."

The Court of Appeals did not direct the dismissal of the complaint against MEBA. It specifically contemplated a trial before the District Court. The Court below confined its decision to the traditional and well established equity rules applicable to the issuance of a temporary injunction and particularly in a labor dispute. See *Hall Signal Co.* v. *General R. Signal Co.*, 153 F. 907 (1907) cited in Opinion below.

It is highly doubtful, in any event, whether Petitioner can bring itself within the doctrine of "pendant jurisdiction" which presupposes a complaint setting forth a single claim for relief but asserting two distinct grounds, one federal and one non federal, as a basis for the relief demanded. Petitioner's claim is predicated upon a breach of collective bargaining agreement in an industry affecting commerce. Under the rule of *Textile Workers of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, the federal and state grounds for relief must necessarily be mutually exclusive. See footnote 7 of Court of Appeals opinion (Appendix A, at p. 57).

C.

If the mandate of the Court of Appeals were to issue, further proceedings before the District Court may eliminate the single question of statutory interpretation presented at this stage of the litigation.

The District Court, after a full trial, may determine that the facts do not present any breach of contract. In such event, the complaint would be dismissed and an appeal would be limited to substantive questions of contract interpretation.

It is this very uncertainty which normally prompts this Court to deny petitions for writs in cases involving an interlocutory order. *American Construction Co. v. Jacksonville T & K Ry Co.*, 148 U. S. 372, 384. While contrary action has been taken by this Court as in the cases cited by Petitioner, in each such instance, however, a special factor justified the writ. In *Bakery Drivers Union* v. *Wagshal*, 338 U. S. 437 (the decision presented a conflict among cases); *Larson* v. *Domestic & Foreign Group*, 337 U. S. 682 (a far-reaching important question such as the immunity of United States from suit); and *Deckert* v. *Independence Shares, Inc.*, 311 U. S. 282 (A troublesome question affecting the administration of a Federal statute). But none of these factors are present in our proceeding.

Further, the denial of the writ would rectify the inequitable condition in which MEBA has been placed. The Court of Appeals after weighing the respective equities of the parties reversed the injunction order. That Court refused to grant a stay of its mandate (R. 160a-161a). A stay was issued by Mr. Justice Harlan. The temporary injunction restraining MEBA's strike and peaceful picketing continues in effect until final disposition of the Petition is made by this Court. Beyond the intervening harm to MEBA, as described in the opinion of the Court below,

which has been considerable, the continuation of the temporary injunction may well result in the full destruction of MEBA's rights in the matter since the collective bargaining agreement between the parties expires June 15, 1958. See Dissenting Opinion of Justice Douglas in *Amalgamated Clothing Workers* v. *Richman Brothers*, 348 U. S. 511, 526.

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari in the suit against respondent MEBA should be denied.

Respectfully submitted,

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National Marine Engineers' Beneficial Association, AFL-CIO.

December 31, 1957.